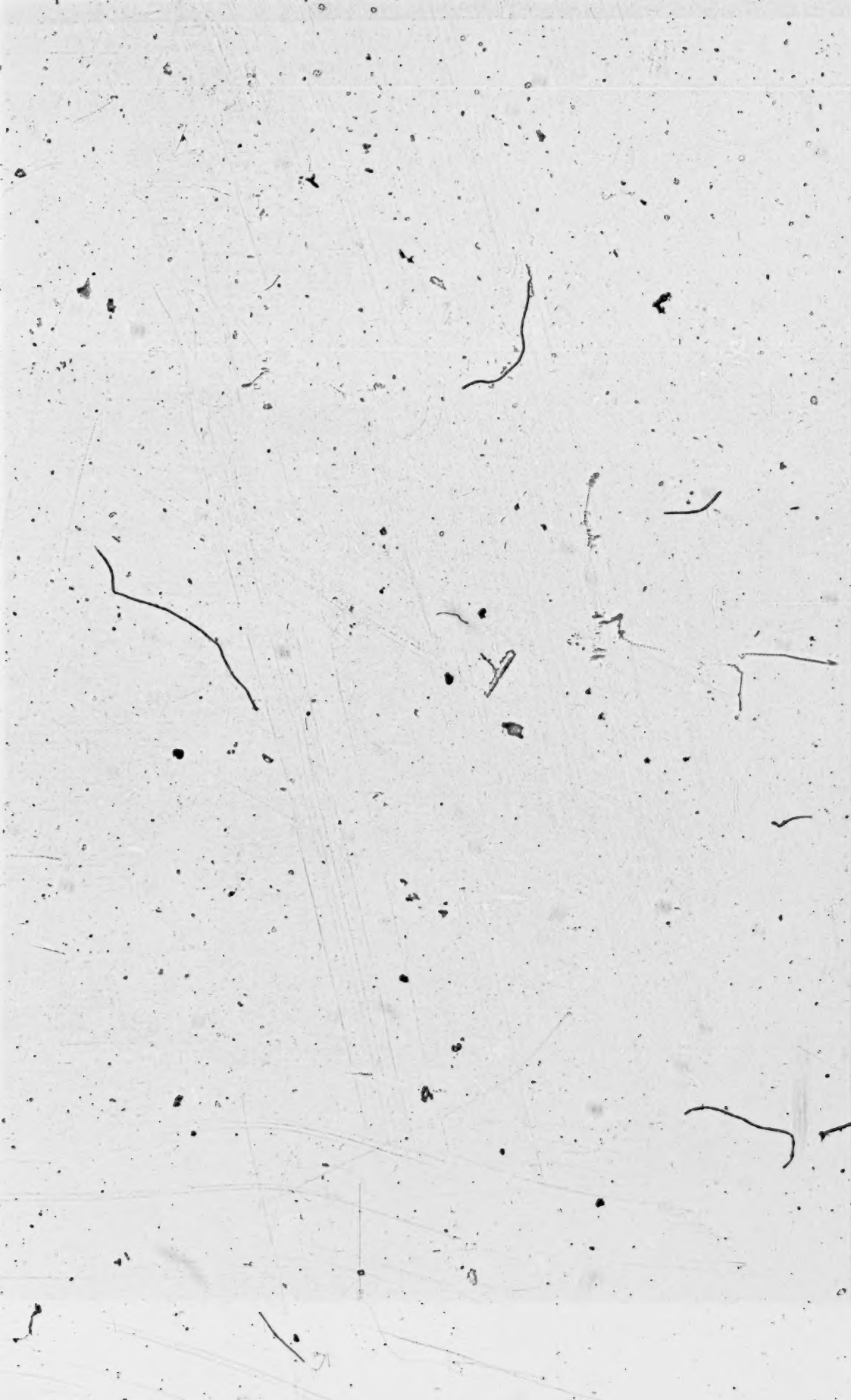

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, *et al.*,
Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT ON THE MERITS OF THE CASE

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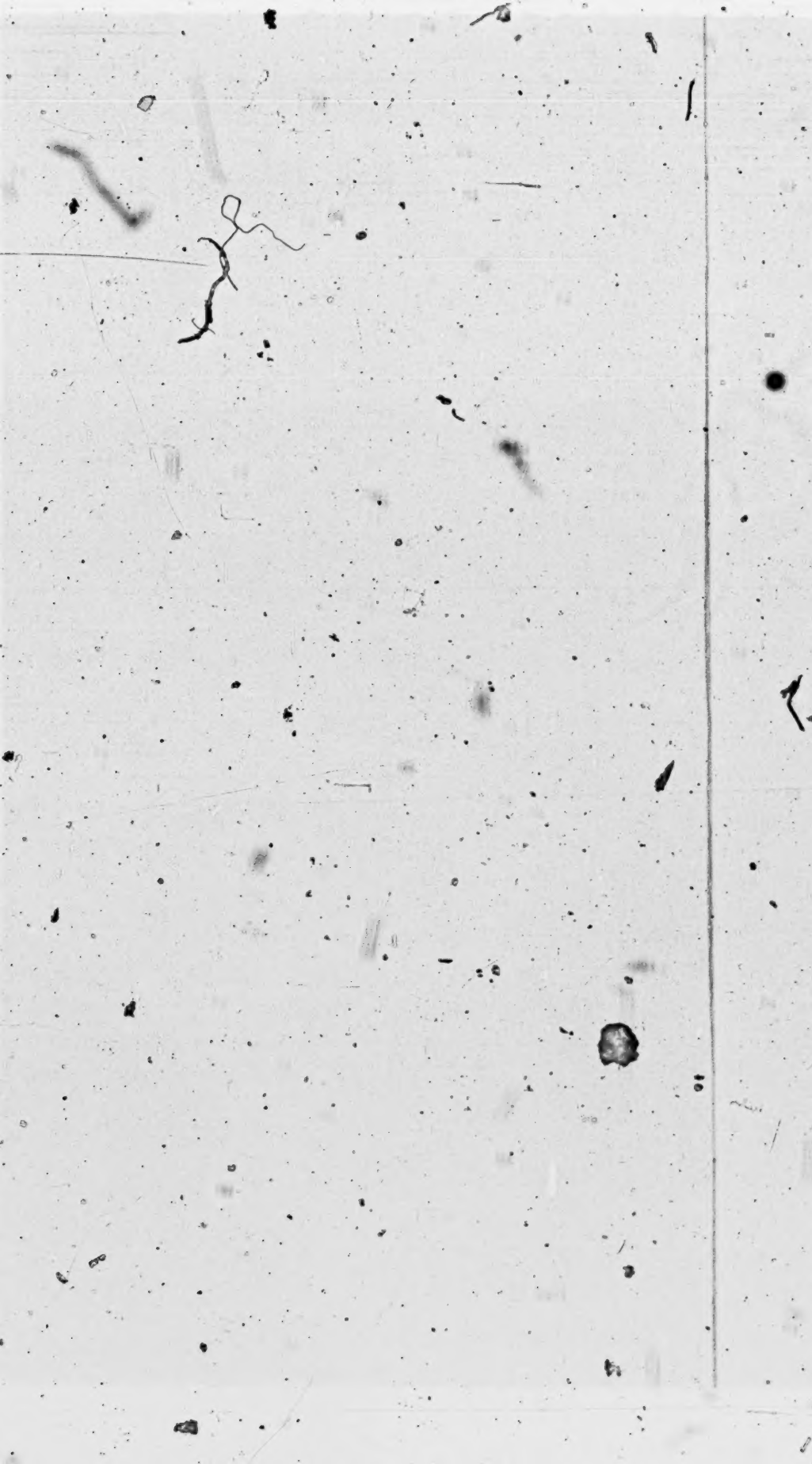

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, *et al.*,

Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent.

BRIEF OF RESPONDENT ON THE MERITS OF THE CASE

I. OPINION IN COURT BELOW.

The opinion of the Supreme Court of Georgia in the case of Atlantic Coast Line Railroad Company v. N. E. Pope, et al., has not yet been reported in the official Georgia Reports, but has been published in 71 S. E. (2d) 243 and is included in the Transcript of the Record. (R. 12).

II. STATEMENT OF THE CASE.

On December 12th, 1951, the Atlantic Coast Line Railroad Company filed suit in the Superior Court of Ben Hill County, Georgia, against N. E. Pope, a minor, seeking to enjoin Pope from further prosecution of an action filed by him in the Circuit Court of Jefferson County, Alabama (R. 1).

The petition alleged that the Atlantic Coast Line Railroad Company was a corporation of the State of Virginia, doing business in Ben Hill County, Georgia, was a common carrier engaged in interstate commerce in various states, including Georgia and Alabama (R. 1); that Pope was, and had been continuously for a period of more than 18 years, a citizen and resident of Ben Hill County, Georgia (R. 1, 2); that on or about August 20th, 1951, Pope filed in the Circuit Court of Jefferson County, Alabama, a suit against the Railroad under the Federal Employers' Liability Act seeking to recover damages for personal injuries alleged to have been sustained while engaged in the employ of the Railroad in Ben Hill County, Georgia (R. 1, 2). The petition further alleged that Pope had a wide choice of convenient courts, both State and Federal, within the State of Georgia in which to institute his action (R. 2); that all of the witnesses for both Pope and the Railroad reside chiefly in Ben Hill County, Georgia (R. 2); that, if the case is tried in Alabama, the Railroad will be compelled to transport six or more witnesses a distance of 313 miles at heavy expense and inconvenience (R. 3); that the Railroad cannot compel its witnesses to attend court in Alabama, that their voluntary attendance is doubtful and that they can be compelled to attend a trial in the courts of Georgia (R. 3); that the Railroad's witnesses are essential employees whose prolonged absence in attending court in Alabama will greatly impede the efficient operation of the

Railroad and that a trial in a convenient Georgia court will require their absence for only a short time (R. 3); that the trial of the case in Alabama will improperly, unreasonably and inequitably burden and harass the Railroad and subject it to unnecessary and unreasonable inconvenience and expense and will operate as a burden upon interstate commerce and impede the national defense effort (R. 4); that Pope brought his suit in Alabama for the purpose of vexatiously and needlessly harassing and annoying the Railroad and subjecting it to unnecessary and unreasonable inconvenience and expense and without corresponding benefit to himself (R. 4); that the dockets of the courts in Georgia available to Pope are in such condition as to permit a fair, speedy and impartial trial of the action and that the trial of the case in Alabama will impose an unnecessary and oppressive burden upon the Alabama court in the trial of a cause originating in Georgia and between parties who are non-residents of Alabama (R. 4, 5). The petition further alleged upon information and belief that Pope did not freely select his Alabama counsel but was advised so to do by the representatives of his Brotherhood who assumed full charge of the action and were the motivating force in the selection of the Alabama counsel (R. 5); that Pope's Alabama counsel are not in most instances directly employed by the client they purport to represent but are employed by reference of the case to them by the Railroad Brotherhoods (R. 5); and that within the preceding twenty-four months Pope's Alabama counsel have filed ten suits against the Atlantic Coast Line Railroad Company upon causes of action arising under the Federal Employers' Liability Act (45 U. S. Code, 51 et seq.) and that the plaintiffs in all except one of such suits were non-residents of Alabama and all except one of said actions arose outside of Alabama (R. 5, 6). The petition further alleged that Pope's acts are contrary to equity and good

conscience and that the Railroad is without an adequate remedy except in a court of equity (R. 6).

The prayers of the petition sought a rule nisi setting an interlocutory hearing, asked for the granting of an interlocutory injunction and sought a permanent injunction restraining Pope from further prosecution of his Alabama case, and for such further relief as may be equitable and just (R. 6, 7).

General demurrers were filed by Pope to the Railroad's petition and the trial court passed an order sustaining the general demurrers and dismissing the petition (R. 10, 11, 12).

Upon writ of error, the Supreme Court of Georgia held that the allegations of the petition set out a cause of action and reversed the decision of the trial court (R. 12, through 22).

Pope filed a motion for re-hearing which was denied (R. 23) and brought his petition for certiorari to this court.

III. ARGUMENT.

A. SUMMARY.

This case is now before the Court upon the grant of a petition for certiorari seeking to review a decision of the Supreme Court of Georgia.

The case had its inception upon the filing in the trial court of a petition by respondent seeking to invoke the inherent equity powers of the Georgia courts to restrain petitioners from further prosecution in the Circuit Court

of Jefferson County, Alabama, of a cause of action under the Federal Employers' Liability Act and which arose in Ben Hill County, Georgia. This petition was based upon a number of grounds which are fully set out in the petition itself and are summaried in the statement of the case set out in Part II hereof.

While fully recognizing that the cases of *Baltimore and Ohio Railway Co. v. Kepner,* (1941) 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28 and *Miles v. Illinois Central Railroad Co.,* (1942) 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 denied such injunctive relief in cases arising under the Federal Employers' Liability Act, respondent contends that the power to grant such relief had long been inherent in courts of equity, continued to exist in other proper cases and is now applicable in cases arising under the Federal Employers' Liability Act. The Miles and Kepner cases were predicated solely upon the venue provisions of the Federal Employers' Liability Act. When Congress enacted Section 1404 (a) of the Judicial Code, it removed the compulsion which was thought to have arisen under the venue provisions. It is the contention of respondent that the Kepner and Miles cases are no longer binding as precedents since the enactment of Section 1404 (a) of the Judicial Code, 28 U. S. C. A. Section 1404 (a), and the decisions of this court in the cases of Ex parte Collett, (1949) 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207 and State of Missouri ex rel., *Southern Railway Co. v. Mayfield,* (1950) 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3, and that the equity courts of the various states now have the inherent power to grant the injunctive relief sought by respondent. The decision sought to be reviewed so held.

By its enactment of Section 1404 (a) Congress clearly provided a remedy to prevent abuse in the selection of a forum in cases arising under the Federal Employers' Lia-

bility Act so far as federal courts are concerned. Throughout the course of this litigation the sole question has been whether state courts are powerless to act or have the inherent right to prevent similar abuse when such cases are filed in the courts of a foreign state rather than in the federal courts in such foreign state.

B. STATUTES INVOLVED.

The statutes involved are:

(1) Section 1257 of the Judicial Code, 28 U. S. C. A. Sec. 1257, the pertinent provision of which is:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: ..... by writ of certiorari....."

(2) Section 6 of the Federal Employers' Liability Act, 45 U. S. C. A. Sec. 56, the pertinent provision of which is:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, ..."

(3) Section 1404 (a) of the Judicial Code, 28 U. S. C. A. Sec. 1404 (a), which is:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. DECISIONS OF THIS COURT.

The pertinent prevailing decisions of this Court are:

Ex parte Collett, (1949) 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

State of Missouri ex rel. *Southern Railway Company v. Mayfield,* (1950) 340 U.S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

D. ARGUMENT.

1. IS THE JUDGMENT SOUGHT TO BE REVIEWED A FINAL JUDGMENT WITHIN THE MEANING OF SECTION 1257 OF THE JUDICIAL CODE?

In the order granting the writ of certiorari this Court directed counsel to discuss the question whether the judgment sought to be reviewed is final within the meaning of 28 U. S. C. A. Section 1257.

That section provides that only final judgments rendered by the highest court of a state may be reviewed by this Court. In a long line of decisions this Court has held that in order for a judgment of a state court to be reviewable it must be a final and complete determination of the case and must end the litigation by fully determining the rights of the parties.

Gospel Army v. City of Los Angeles, (1947) 331 U. S. 543, 67 S. Ct. 1428, 91 L. Ed. 1662, at page 1665.

Department of Banking v. Pink, (1942) 317 U. S. 264, 63 S. Ct. 233, 87 L. Ed. 254, at p. 257.

Arnold v. United States for use of W. B. Guimarin & Co., (1923) 263 U. S. 427, 44 S. Ct. 144, 68 L. Ed. 371, at p. 375.

In discussing this question this Court has said that such a judgment "Must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein".

Market Street Railway Co. v. Railroad Commission of California, (1945) 324 U. S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, at p. 1176.

The case now under consideration meets the first of these tests as it is not subject to review by any other state court. The question is whether it meets the second test. The case was before the lower court on exceptions to an order sustaining a general demurrer and dismissing the petition. The Supreme Court of Georgia held that the allegations of the petition were sufficient and reversed the decision of the trial court entirely upon questions of law.

So far as the Georgia law is concerned this decision is final, is binding upon the parties and is not subject to further review by Georgia courts. This is the general rule and is well established in Georgia in a long line of decisions.

Ingram v. Mercer University, (1897) 102 *Ga.* 226 (1), 29 S. E. 273.

City of Atlanta v. First Methodist Church, (1889) 83 *Ga.* 448, 10 S. E. 231.

Georgia Railway and Power Co. v. Town of Decatur, (1922) 153 *Ga.* 329 (1, 2), 111 S. E. 911.

Although the cases above cited involved rulings on the grant or refusal of interlocutory injunctions the principle is applicable where the ruling of the appellate court reversed the order of the trial court sustaining a general demurrer to the plaintiff's petition as was done in the case now under consideration.

Rivers v. Brown, (1945) 200 *Ga.* 49, 36 S. E. 2d 429.

In discussing the binding effect of its former decision in the same case, the Supreme Court of Georgia in both an early and a recent case has said:

> "When a case is brought to this Court a second time, with no new facts to substantially change the view of it taken before, it only remains for this Court to reaffirm its first judgment, by affirming generally the judgment of the court in attempting to enforce it".
>
> *Sanderlin v. Sanderlin,* (1858) 27 *Ga.* 334.
>
> *Rivers v. Brown,* (1945) 200 *Ga.* 49, at p. 52 (and cases cited), 36 S. E. 2d 429.

The first decision becomes the law of the case and is res adjudicata and binding upon the parties upon the subsequent appearances of the case even though the Supreme Court in the interim had changed its rule upon the principle involved.

> *Saulsbury, Respess & Co., v. Iverson,* (1884) 73 *Ga.* 733 (1).

In the Saulsbury case, supra, the Supreme Court of Georgia adhered to its former decision in the same case (*Saulsbury, Respess & Co., v. Iverson,* (1881) 68 *Ga.* 790), even though in the case of *Weems v. Coker,* (1883) 70 *Ga.* 746 (2, 2a) the Court had made a contrary ruling on the principle involved.

The case of *Georgia Railway and Power Co., v. Town of Decatur,* supra, was before this Court on petition for certiorari from the judgment rendered on the final hearing of that case in the Supreme Court of Georgia. The contention was made that the first opinion of the State Supreme Court affirming the interlocutory order of the trial court was a final adjudication from which a writ of error might have been taken. This Court held that the first decision of

the State Supreme Court was not final within the meaning of the statute for the reason that further action was taken in the trial court following the first decision of the appellate court and held that the first decision was reviewable upon the appeal from the final decision of the State Supreme Court.

> *Georgia Railway and Power Co., v. Town of Decatur*, (1923) 262 U. S. 432, 43 S. Ct. 613, 67 L. Ed. 1065, at p. 1073.

It would seem that under a strict application of the rule the case now under consideration should be dismissed.

However, this Court has in several instances relaxed the rule and in a recent case has said: "Increasingly this Court has become less formal in the matter of final judgments. It is no longer the rule that the face of the judgment is determinative of whether it is final. 'Today the test is not whether under local rules of practice the judgment is denominated final — but rather whether the record shows that the order of the Appellate Court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court' ".

> *Gospel Army v. City of Los Angeles*, (1947) 331 U. S. 543, 67 S. Ct. 1428, 91 L. Ed. 1662, at p. 1665.

In the case now before this Court the question of law is controlling. Counsel for both petitioners and respondent have so recognized in their arguments in both the trial court and the state supreme court. In their brief in response to the Court's order, counsel for petitioners admit that the allegations of fact in the original petition for injunction are true. (Petitioners' brief in response to court's order p. 3.)

In a somewhat similar case where the Supreme Court of California had reversed the judgment of the trial court

without direction, this Court held that it had jurisdiction to review the case saying: "Although the Supreme Court reversed the judgment of the trial court without direction, its decision controls the disposition of the case.——*Since the facts have been stipulated* and the Supreme Court of California has passed on the issues which control the litigation, we take it that there is nothing more to be decided. The jurisdictional objection is thus without merit (Emphasis added)."

Richfield Oil Corp. v. State Board of Equalization, (1946) 329 U. S. 69, 67 S. Ct. 156, 91 L. Ed. 80, at pp. 87, 88.

While there was no stipulation of fact in the instant case it is analogous to the case just cited. It is conceded that the allegations of the original petition are true and this admission by counsel for petitioners is tantamount to a solemn admission *in judicio.* On the assumption that this Court granted the writ of certiorari in view of the importance of the federal question involved, it would seem that no useful purpose could be served by dismissal which would involve the necessity of another appeal on identically the same question.

2. UPON PROPER SHOWING A STATE COURT OF EQUITY HAS INHERENT POWER TO ENJOIN A RESIDENT OF ITS STATE FROM PROSECUTING AN INEQUITABLE SUIT IN THE COURTS OF ANOTHER STATE.

In its suit filed in the Superior Court of Ben Hill County, Georgia, respondent sought to restrain Pope, a resident of that county, from prosecuting a cause of action filed in the Circuit Court of Jefferson County, Alabama. The relief sought was based upon the inherent equity power of the trial court to grant such relief in oppressive and in-

equitable cases. The decision now under review clearly holds that the courts of Georgia have such powers.

The grounds upon which the relief was sought are fully set out in the petition. The decision now under review held that the allegations of this petition were sufficient against general demurrer. (R. 22).

In discussing this inherent power it has been said:

> "It is in fact the settled rule, supported by all the authorities, that a court of equity in one state may and, in a proper case, will restrain its own citizens—from prosecuting actions or proceedings in other states or in foreign countries. Such an injunction will be granted in favor of one who shows clearly that it would be inequitable to permit the prosecution of the suit".

28 Am. Jur. 389, Injunctions Sec. 204.

In support of our view that respondents petition alleges "a proper case" for injunctive relief, we invite the Court's attention to 43 C. J. S. p. 499, Injunctions Sec. 49 and cases cited therein.

The power of state courts to grant such injunctive relief has been recognized in the federal courts and in a well considered opinion in 1931 the Circuit Court of Appeals, Seventh Circuit, said:

> "The general right of Indiana citizens to begin actions of this nature (under Federal Employers' Liability Act), wherever service of process on the defendant could be had, *was always potentially qualified by the jurisdiction of equity to restrain the citizen from commencing the action in a foreign jurisdiction where to do so would unreasonably, inequitably, and unfairly harass, oppress, or defraud the defendant.*

"The Federal Employers' Liability Act does not assume to remove this qualification, and in our judgment *does not exempt the citizen from invocation against him of this equitable jurisdiction* under facts which would in general justify its application". (emphasis added)

Ex parte Crandall, (1931) 53 F. (2d) 969, at p. 971.

Certiorari was denied by this Court in *Crandall v. Habbe*, 285 U. S. 540, 52 S. Ct. 312, 76 L. Ed. 933.

The powers of state courts are determined by the laws of the respective states. Under the laws of Georgia its equity courts have the inherent power to restrain its citizens from prosecuting inequitable cases in foreign states.

The statutes of Georgia provide that equity may restrain proceedings in another court by writ of injunction (Code of Georgia of 1933, Sec. 55-101), and that "equity may enjoin the defendant as to transactions beyond the limits of this State". (Code of Georgia of 1933, Sec. 55-112).

The Appellate Courts of Georgia over a long period of years have recognized that the Courts of Georgia possess such power to enjoin.

Amburson Construction Co. v. Northern Contracting Co., (1913) 140 *Ga.* 1 (3), 7, 78 S. E. 340.

Engel v. Scheuerman, (1869) 40 *Ga.* 206.

McDaniel v. Alford, (1918) 148 *Ga.* 609 (1), 97 S. E. 673.

In the case now under review the Supreme Court of Georgia in a well considered discussion of this question held that the Courts of Georgia have the inherent power to enjoin such cases. We respectfully invite this Court's attention to the discussion in that opinion.

This inherent power of state courts to grant such injunctive relief is recognized in the Kepner case, in which this Court said "The real contention of petitioner is that despite the admitted venue respondent is acting in a vexatious and inequitable manner in maintaining the federal suit in a distant jurisdiction when a convenient and suitable forum is at respondent's doorstep. Under such circumstances petitioner asserts power, abstractly speaking, in the high court to prevent a resident under its jurisdiction from doing inequity. *Such power does exist.* (Emphasis added.)

> *Baltimore and Ohio Railroad Co.*, (1941) 314 U. S. 44, at p. 51, 62 S. Ct. 6, 86 L. Ed. 28, at p. 32.

We submit that state courts have the inherent power to grant the injunctive relief sought by respondent in the case now under review.

3. IN DENYING INJUNCTIVE RELIEF THE KEPNER AND MILES CASES WERE BASED SOLELY ON THE VENUE PROVISIONS OF THE FEDERAL EMPLOYERS' LIABILITY ACT.

This Court and other federal courts have recognized the jurisdiction of state courts to grant injunctive relief such as was sought in the case now under review. The decisions in the Kepner and Miles cases recognized the existence of such power but denied the relief in cases arising under the Federal Employers' Liability Act solely because of the venue provisions of that Act. In the Kepner case this Court said;

> "We read the opinion of the Supreme Court of Ohio to express the view that *if it were not for Sec. 6* of the Employers' Liability Act the requested injunction would be granted on the undisputed facts *of the petition*. Section 6 establishes venue for an action in the

federal courts. As such venue is a privilege created by federal statute and claimed by respondent the Supreme Court of Ohio *felt constrained by the Supremacy Clause to treat Section 6 as decisive of the issue.*"

Baltimore and Ohio Railroad Co., v. Kepner, (1941) 314 U. S. 44, 52, 62 S. Ct. 6, 86 L. Ed. 28, 33.

"The real point of controversy here is whether that portion of Section 6 of the Federal Employers' Liability Act which holds litigation in the state court where it is instituted, prevents the court of another state from enjoining citizens, within its jurisdiction, from continued prosecution of the suit on grounds of inequity."

Miles v. Illinois Central Railroad Co., (1942) 315 U. S. 698, 702, 62 S. Ct. 827, 86 L. Ed. 1129, 1133.

4. BY ENACTING SECTION 1404 (a) OF THE JUDICIAL CODE CONGRESS EXPRESSED ITS INTENTION TO FREE THE COURTS FROM THE RESTRICTIONS IMPOSED BY THE KEPNER AND MILES DECISIONS.

Denial of injunctive relief under the decisions in the Miles and Kepner cases was based solely upon the supposed compulsion arising from Section 6 of the Liability Act. While fully recognizing the evils arising from the transportation of vexatious and harassing cases to far distant forums, this Court suggested a remedy when it said in the Miles case that "If it is deemed unjust, the remedy is legislative——."

Congress provided the remedy in federal courts when it enacted Section 1404(a) which applies to all cases, including those arising under the Liability Act. The effect was to free both federal and state courts from the restrictions imposed by the Kepner and Miles cases.

The entire legislative history of Section 1404 (a) of the Judicial Code shows the intent of Congress to remedy the abuses in the choice of forums by plaintiffs who saw fit to bring their suits in courts far from where the cause of action arose and the witnesses resided. This Court has so recognized.

> "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits. (Citing Kepner and Miles cases)——. The revisor's notes, which accompany each section of the Code, here read as follows: 'Subsection (a) was drafted in accordance with doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employers [Sic] Liability Act in New York, although the accident occurred and the employee resided in Ohio.' "
>
> Ex parte Collett, (1949) 337 U. S. 55, 57, 69 S. Ct. 944, 93 L. Ed. 1207, 1209.

This Court's discussion of the legislative history of Section 1404 (a) clearly shows that such was the Congressional intent.

In the case of *Nunn v. Chicago, Milwaukee, St. P. & P. R. Co.*, 80 F. Supp. 745 (S. D. N. Y. 1948), where the defendant railroad invoked Sec. 1404 (a) and had the case transferred to a more convenient forum, the Court, after discussing the Kepner and Miles cases, stated:

> "The foregoing cases are no longer controlling, or even applicable. Not only were they decided prior to the enactment of the new Judicial Code, when there was no provision of statute similar to 1404 (a), but *the legislative history of Section 1404 (a) makes it*

abundantly clear that it was the very purpose of Congress, in enacting that section, to change the rule which had been approved by the decisions in those cases—— a course indicated by the statement of the Supreme Court in the Kepner case, supra, page 54 of 314 U. S., page 10 of 62 S. Ct., that if the rule 'is deemed unjust, the remedy is legislative.' " (emphasis ours)

Nunn v. Chicago, etc., R. Co., supra, p. 747.

In their original brief (Petitioners' Brief in Support of ·ition, p. 13), counsel for petitioners discuss this Court's tatement in Ex parte Collett that Section 6 of the Liability ct and Section 1404 (a) deal with two separate and disnct problems. We agree. Section 6 defines venue. Section 04 (a) deals with the right to transfer an action properly rought in a federal court. Injunction affords relief when uits become oppressive and inequitable because brought distant courts. The use of injunctive relief is as seprate and distinct from Section 6 as is Section 1404 (a) nd is as unhampered by Section 6 as is Section 1404 (a).

We do not deny that Pope had the right under Section to bring his suit in the Circuit Court of Jefferson County, labama. We do say that if he had filed his suit in a ederal court in Alabama Section 1404 (a) would have een applicable under the allegations of respondent's petion. We further say that when Pope chose to file his uit in the state court of Alabama, he can be restrained rom further prosecution of that action and brought home o litigate when it is shown that he is acting unfairly, ppressively and unjustly.

Section 6 defines the forums in which injured employees ay bring their actions. It does nothing more. When it nacted Section 1404 (a) Congress made this clear. Section 1404 (a) allows the transfer of such a case from one

federal court to another federal court upon a motion of forum non conveniens. Section 6 no longer has any effect upon such a transfer. Neither does Section 6 now prohibit the use of injunctive relief in proper cases in state courts where the employee elects to file his action in the courts of a foreign state. This was further clarified by this Court in a subsequent case in which it held that a state court is not compelled to reject the doctrine of forum non conveniens by any provision of the Federal law in cases arising under the Liability Act. In so holding this Court stated:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of Federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits *according to its own local law.*" (Emphasis ours.)
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> *Missouri v. Mayfield,* (1950) 340 U. S. 1, 5, 71 S. Ct. 1, 95 L. Ed. 3, 8.

In a concurring opinion Mr. Justice Jackson stated:

> "The Missouri Court appears to have acted under the supposed compulsion of *Miles v. Illinois Cent. R. Co.*, 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104, among other of this Court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. *By amendment, 28 U.S.C.A. Section 1404 (a),* as interpreted in Ex parte Collett, 337 U. S. 55, 93 L. Ed. 1207, 69 S. Ct. 944, 959, 10 A.L.R. 2d 921, *Congress has removed the compulsion which determined the Miles Case,* and the Missouri Court should no longer regard it as controlling. *A federal court in Missouri would now be free to decline to hear this case* and could transfer it to its proper forum. *Certainly a State is under no obligation to provide a court for two nonresident parties to litigate a foreign-born cause of action when the Federal Government which creates*

the cause of action, frees its own courts within that State from mandatory consideration of the same case. Because of what I wrote in the Miles case I add this note, but otherwise concur in the decision and opinion of the Court." (Emphasis supplied.)

Missouri v. Mayfield, (1950) 340 U. S. 1, 5-6, 71 S. Ct. 1, 95 L. Ed. 3, 9.

It is therefore clear that Congress never intended that the venue provisions of the Federal Employers' Liability Act should strip state courts of their injunctive powers. If under Section 1404 (a) a case filed in a federal court can be transferred to a more appropriate forum in the interest of justice and for the convenience of the parties, then by the same token it necessarily follows that state courts have the right to use injunctions in proper cases where demanded by the interests of justice and equity.

State courts of equity, more than any other branch of our judicial system, have been able to *apply* the real ethical concepts of our great system of jurisprudence. Any decision by this court other than the affirmance of the decision in the court below will in the words of Mr. Justice Frankfurter "unjustifiably limit long-settled powers of the state courts and thereby bring into disequilibrium the relationship of federal and state courts. (Kepner case, p. 54 of 314 U. S., p. 34 of 86 L. Ed.)

Section 1404 (a) provides a complete and adequate remedy in cases filed in the federal courts. It removed the compulsion that was thought to exist when the Miles case was decided. As was stated in the Mayfield case, the enactment of Section 1404 (a) has likewise freed the state courts from such compulsion and they are now at liberty to apply their own practice and procedure in affording similar relief. If this compulsion has not been removed from state

courts we will have the anomalous situation of permitting federal courts to grant appropriate relief and yet deny state courts the power to grant such relief in identical circumstances.

We submit that the state courts are now equally free to apply the proper remedy under their own procedure and statutes.

In Georgia injunction is the remedy.

5. INJUNCTION AND FORUM NON CONVENIENS ARE MERELY TWO METHODS OF REACHING THE SAME RESULT AND ARE BASED ON THE SAME PRINCIPLES.

The remedies of injunction and forum non conveniens are separate roads leading to the same destination. Both are aimed at combatting the same evils. Both are based upon the same factual circumstances. They differ only in their place of application.

These remedies have been used many times to grant relief in vexatious and oppressive suits filed by plaintiffs in far distant courts. The doctrine of forum non conveniens is applied in the court where the plaintiff's case is pending. Injunction is granted by the court where the plaintiff resides. Both act in personam.

This Court has made no distinction between the principles underlying these doctrines.

> "It is true that in cases under the Federal Employers' Liability Act we have held that the plaintiff's choice of a forum cannot be defeated on the basis of forum non conveniens. But this was because the special venue act under which those cases are brought was believed to require it. (Citing Kepner and Miles cases.)"

Gulf Oil Corp. v. Gilbert, (1947) 330 U. S. 501, 505, 67 S. Ct. 839, 91 L. Ed. 1055, 1061.

It is significant that the Kepner and Miles cases which involved *injunctive* relief are cited in support of the proposition that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*.

This Court later held in the Collett and Mayfield cases, in allowing relief under the doctrine of *forum non conveniens*, that the Miles and Kepner cases which involved *injunctive* relief were *no longer* binding as precedents because of the enactment of Section 1404 (a) and not because there was any distinction between the two doctrines. This is clearly shown in the concurring opinion of Mr. Justice Jackson in the Mayfield case which we cited above (p. 16) and in which he states that when Congress enacted the *forum non conveniens* statute it removed the compulsion under which this Court suffered in refusing to allow an *injunction* in the Miles case. In other words, the venue provision of the Federal Employers' Liability Act no longer prohibits invoking the doctrine of forum non conveniens and should no longer defeat the use of injunctions in proper cases.

Since there is no difference between the principles underlying the two doctrines or the facts upon which they are applied (except as to the place of application) and since the ruling of this Court in the Mayfield case holds that a state court may apply the doctrine of forum non conveniens under its applicable laws, it necessarily follows that in a proper case the state courts have the power to invoke injunctive relief. The laws of Georgia sanction its use.

It is significant that the Gulf Oil Corp. case, supra, applied the doctrine of forum non conveniens in federal

courts before the enactment of Section 1404 (a) and it thus appears that the doctrine was then applicable in all cases except those arising under the Federal Employers' Liability Act. This further illustrates that it was the intent of Congress in enacting Section 1404 (a) to remedy the abuses in choice of forums in Liability Act cases.

When Section 1404 (a) was enacted, Congress exercised the limit of its powers and provided a complete and adequate remedy in the federal courts. Defendants are now protected in federal courts against burdensome and oppressive suits like the one now before this Court. Unless the Georgia Courts are allowed to exercise their inherent power to grant injunctive relief, respondent has no protection simply because the case was filed in a state court rather than in a federal court.

Respondent is unable to obtain relief in the courts of Alabama which reject all pleas of forum non conveniens. The Supreme Court of Alabama has so held because of a peculiar statute found only in that state and the State of Missouri.

> Ex parte State ex rel. Southern Railway Co. 47 So. (2d) 249.
>
> Ex parte State ex rel. Atlantic Coast Line Railroad Co. 47 So. (2d) 251.

Since the courts of Alabama cannot apply the doctrine of forum non conveniens respondent had no alternative but to seek injunctive relief in the courts of Georgia. If Georgia courts cannot grant such relief in proper cases the will of Congress when it enacted Section 1404 (a) is thwarted by the mere filing of the suit in a state whose organic law prohibits the application of the doctrine of forum non conveniens.

Petitioners' argument (Brief in support of petition p. 19) that each state is free to apply its policy of forum non conveniens in Federal Employers' Liability Act cases under the doctrine of *Douglas v. N. Y. N. H. R. Co.*, (1929) 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, applies with equal force to our contention that Georgia Courts are free to apply its policy as to injunctive relief in proper cases. Petitioners would limit respondent to a motion of forum non conveniens in the Alabama court, which they recognize as futile. Petitioners entirely disregard the fact that Alabama courts reject the doctrine of forum non conveniens. Their argument seeks to apply a different result in Alabama and Missouri from that in force in other states.

Petitioners argue that the Georgia courts are seeking to apply the policy of forum non conveniens in the courts of Alabama (Brief in Support of Petition p. 20). This is untenable. The Georgia Court does not seek to impose its will upon the Alabama Court but merely seeks to control the acts of a citizen of Georgia over whom it has jurisdiction in personam. The principle that the use of such injunctive relief in no way interferes with the courts of another state is well established and is recognized by this Court.

> "We are unable to yield assent to the statement of the court below that 'the restraint of a proper party is legally tantamount to the restraint of the court itself'. The reality of the distinction has illustration in a host of cases."
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> *Steelman v. All Continent Corp.*, (1937) 301 U. S. 278, 291, 57 S. Ct. 705, 81 L. Ed. 1085, 1093.

Congress has no power to regulate procedure of state courts. This Court has recognized that state courts are now free to apply the doctrine of forum non conveniens in Liability Act cases. That doctrine is not available to

respondent in the case now under consideration because of the Alabama law. Since no remedy is available to respondent in the Courts of Alabama, it is compelled to resort to the Courts of Georgia for the relief to which it is entitled.

To now hold that the Georgia Courts are unable to grant relief by injunction because the case was filed in the State Court of Alabama when an adequate remedy would have been available if it had been filed in a Federal Court in that State would be a perversion of justice and the denial of substantial rights.

6. THE CASE OF BOYD v. GRAND TRUNK WESTERN RAILROAD IS CLEARLY DISTINGUISHABLE FROM AND IN NO WAY APPLIES TO THE CASE NOW UNDER CONSIDERATION.

Throughout this case counsel for petitioners have stressed the case of *Boyd v. Grand Trunk Western Railroad Co.*, (1949) 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, and have strenuously argued that it substantiates their position. We differ with this conclusion and submit that the Boyd case involved an entirely different state of facts and was determined upon an entirely different question from those involved in the case now under review.

The sole question before this Court in the Boyd case was the validity of two contracts signed by an injured employee after an accident and in which he agreed to file suit only in either the state or district court where the accident occurred or where he resided at the time he sustained his injuries. This Court so stated.

> "In issue here is the validity of a contract restricting the choice of venue for an action based upon the Federal Employers' Liability Act."

Boyd v. Grand Trunk Western Railroad Co., (1949) 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, 56.

The validity of the contracts in question was the sole basis upon which the case was decided in the state court, *Grand Trunk Western R. Co. v. Boyd*, (1948) 33 N. W. (2d) 120, 121, and no other questions were considered in passing upon the case. The Supreme Court of Michigan reversed the trial court, holding that the contracts were valid because they were executed after the injury was sustained. No other questions were presented or passed upon by any court.

The Boyd case was reversed by this Court on the sole ground that the contracts restricting a choice of venue were directly in conflict with Section 5 of the Federal Employers' Liability Act (45 U. S. C. A. Sec. 55) and for that reason were void.

Counsel for petitioners argue that there is great similarity between the Boyd case and the one now under review. This argument is without foundation. The only similarity is that in both cases the railroad asked for an injunction. In the Boyd case the right to enjoin was based squarely upon the provisions of the contracts under which the injured employee agreed to file suit only in certain courts. In our case the right to injunctive relief is based upon the broad powers of equity courts to restrain the prosecution of vexatious, oppressive and inequitable suits.

We fail to see any similarity between the two cases and submit that the Boyd case, supra, is not applicable to and in no way controls the issues here involved.

E. CONCLUSION.

The effect of Section 1404 (a) of the Judicial Code upon the Kepner and Miles cases, as declared in the prevailing decisions of this Court, has been correctly interpreted and construed in the decision now under review.

Prior to the decisions in the Kepner and Miles cases, state courts had the inherent power to restrain their citizens from prosecuting inequitable cases in foreign jurisdictions. The Kepner and Miles decisions were based solely on Section 6 of the Liability Act. They did not abrogate the inherent power of state courts but merely limited it in Liability Act cases. The power continued to exist. The enactment of Section 1404 (a) dissolved the binding force of these decisions as precedents. The doctrines laid down in the Collett and Mayfield cases now control and state courts are free to exercise their full equity powers in all cases.

Forum non conveniens permits the transfer of a case filed in a federal court if such transfer is in the interests of justice and convenience. The compulsion which was thought to have rested upon state courts by reason of Section 6 of the Liability Act no longer exists. It would be grossly inequitable to deny respondent the relief which the Supreme Court of Georgia has said it is entitled to obtain under the allegations of its petition. The Georgia Courts should be left free to follow their own practice and procedure.

The decision of the Supreme Court of Georgia is in full accord with the doctrines promulgated by Congress and enunciated by this Court in the Collett and Mayfield cases which are controlling.

We respectfully submit that the decision of the Supreme Court of Georgia should be affirmed.

Respectfully submitted,

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